

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

In re Felix BURGOS

:
: Civ. No. 3:01cv1443 (PCD)
:

RULING ON MOTION FOR RECONSIDERATION

Pro se appellant moves for reconsideration of the decision denying his appeal from the order of the United States Bankruptcy Court for the District of Connecticut. For the reasons set forth herein, reconsideration is **granted**, the original decision dismissing the appeal as moot is **vacated**, and the order of the Bankruptcy Court is **affirmed in part** and **remanded** for further proceedings consistent with this decision.

I. BACKGROUND

Familiarity with the facts contained in the prior decision dismissing the appeal as moot is presumed. Appellant appeals from the Bankruptcy Court order finding the automatic stay inapplicable to the execution of an order of eviction from the property at 1312 State Street, Bridgeport, Connecticut. The Bankruptcy Court determined the central issue in that order to be “whether the automatic stay, *see* 11 U.S.C. § 362, nullified the eviction.” *In re Burgos*, 263 B.R. 698, 699 (Bankr. D. Conn. June 27, 2001). This Court dismissed the appeal having been notified that the subject property was razed and with the understanding that appellant sought no remedy other than a return of possession of the subject property.

II. DISCUSSION

The original decision was premised on appellant’s seeking only a return of possession of the apartment. Appellant’s “Motion to Enforce Automatic Stay” contains no reference to a

claim of damages for violation of the automatic stay. After further review, appellant filed a separate document, entitled “Memorandum in Support of Enforcing Automatic Stay,” in which he argued that “all involved should be found in contempt of court and sanctioned for willful[ly] and knowingly violating section 362.” In deference to appellants *pro se* status, *see Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), it will be accepted as a claim for damages. The appeal is thus not rendered moot by the destruction of the building and the decision so dismissing the appeal is hereby vacated.

Appellant argues that the order of the Bankruptcy Court should be reversed because of (1) improper factual findings as to time of possession, (2) an improper legal determination as to when the automatic stay goes into effect and (3) a number of improprieties in the state court judgment that established the owner’s right to possession of the building. Appellee responds that these arguments are without merit.

A. Contested Factual Findings

Appellant’s argument that the Bankruptcy Court made erroneous factual findings as to the time the owner obtained possession of the building and the number of units occupied at the time is wholly unsupported by the record. Appellant has neither designated nor included a transcript of the proceedings before the Bankruptcy Court as it is his obligation to do. *See* FED. R. BANKR. P. 8006; *see also Frostbaum v. Ochs*, 277 B.R. 470, 473 n.1 (E.D.N.Y. 2002) (“it is the appellant’s obligation to supply any part of the lower proceedings transcript which is necessary to the adjudication of his claim on appeal”); *John P. Maguire & Co., Inc. v. Sapir (In re Candor Diamond Corp.)*, 26 B.R. 844, 846 (Bankr. S.D.N.Y. 1983) (“the

record on appeal should contain the documentation necessary to afford the reviewing court a complete understanding of the case”).¹

B. Effective Time of Automatic Stay

Appellant’s argument that the automatic stay is in effect at some time other than the time at which the bankruptcy petition is filed is without merit. “The stay is effective *immediately upon the filing* of the petition . . . and any proceedings or actions described in section 362(a)(1) are void and without vitality if they occur after the automatic stay takes effect” *Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994) (emphasis added; citations omitted). The relevant time for is thus indicated by the time stamp on the bankruptcy petition. In the present case, if the owners properly executed an order of possession at 8:30 a.m., then the automatic stay effective at 9:33 a.m. would have no bearing on the validity of the execution of the order of eviction.

C. Improprieties in State Court Judgment

Appellant’s claims as to the validity of the state court proceedings do present a problem. The state court order granting possession of the subject property to the owners was accorded preclusive effect on the issue of possession. The Bankruptcy Court cited *State of New York v. Sokol (In re Sokol)*, 113 F.3d 303 (2d Cir. 1997), as its basis for doing so. The

¹ Even if transcripts were provided, appellant’s statement that the sheriff accessed his apartment prior to 8:30 a.m. and that he filed his petition at 9:33 a.m. on the same day concedes the order of events. See Appellant’s Br. at 6. There is no indication whatsoever in the documents provided by appellant that he informed the Bankruptcy Court that he had occupied several units and thus his eviction exceeded the scope of the state court judgment.

law of collateral estoppel applied in *Sokol*, however, is not directly applicable to the facts of this case. While *Sokol* does recite the general proposition that “the preclusive effect of a state court determination in a subsequent federal action is determined by the rules of the state where the prior action occurred,” *id.* at 306, it involves the application of the New York law of collateral estoppel rather than the Connecticut law of collateral estoppel. Actual litigation is not a requirement to accord a judgment preclusive effect in New York. *See id.* In contrast, Connecticut law requires actual litigation and has been loathe to accord preclusive effect to default judgments such as the one involved in the present case. *See Jackson v. R.G. Whipple, Inc.*, 225 Conn. 705, 717-18, 627 A.2d 374 (1993).

The order involved herein does not reveal which law of collateral estoppel was applied in determining the preclusive effect of the state court judgment. As such, it is unclear whether the ruling rests on the more deferential New York law of collateral estoppel or the Connecticut law of collateral estoppel. Under Connecticut law, a judgment will not be given preclusive effect on an issue absent findings that the issue has been “fully and fairly litigated in the first action” and “actually decided,” and that the “decision must have been necessary to the judgment.” *Carol Mgmt. Corp. v. Bd. of Tax Review*, 228 Conn. 23, 32, 633 A.2d 1368 (1993). As the issue of the owner’s right to possession of the subject property is central to a determination of whether the automatic stay was in effect at the time the owner entered the property, the matter is remanded for further proceedings on whether the owner had a right to take possession at the time indicated. If such right is found to exist, the court need not address appellant’s request for sanctions for violation of the automatic stay.

III. CONCLUSION

The order dismissing the appeal as moot is **vacated**. Appellant's appeal, (Doc. No. 1), is **affirmed in part** and **remanded** for a determination as to the validity of the state court judgment ordering eviction. If the state court judgment is not accorded preclusive effect, then a determination shall be made as to whether possession of the property in which appellant had an interest was obtained in a manner consistent with the laws of Connecticut and prior to the time of filing of the bankruptcy petition. If possession was not perfected prior to time of filing, the court must address appellant's claim for damages for violation of the automatic stay. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, October __, 2002.

Peter C. Dorsey
United States District Judge